

1 552(b)(7)(E). AFFIRMED.
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13 RAKOFF, District Judge.

14 Plaintiffs-Appellants, the Allard K. Lowenstein
15 International Human Rights Project and the Jerome N. Frank Legal
16 Services Organization (collectively, "the Project"), appeal the
17 district court's partial grant of summary judgment to
18 Defendant-Appellee, the Department of Homeland Security ("DHS").
19 Having determined that the DHS properly withheld certain portions
20 of a 2004 memorandum under Exemption (b)(7)(E) of the Freedom of
21 Information Act ("FOIA"), 5 U.S.C. § 552(b)(7)(E), the Court
22 hereby affirms the decision of the district court.

23 **BACKGROUND**

24 In the months preceding the 2004 presidential election and
25 2005 inauguration, U.S. Immigration and Customs Enforcement
26 ("ICE"), a division of DHS, undertook "Operation Front Line" for
27 the stated purpose of identifying and preventing potential
28 terrorist activities that were anticipated in connection with
29 those events. See Allard K. Lowenstein Int'l Human Rights
30 Project v. Dep't of Homeland Sec., 603 F. Supp. 2d 354, 360 (D.

1 Conn. 2009). The Project claims, however, that Operation Front
2 Line, in dragnet fashion, indiscriminately targeted men from
3 Muslim-majority countries and charged them with minor immigration
4 violations. The Project has sought through FOIA to obtain
5 internal government documents that the Project believes may
6 reveal governmental misconduct of this kind.

7 This appeal concerns the Project's request under FOIA for
8 one of these documents: a September 2004 memorandum regarding
9 Operation Front Line issued to special agents and deputy
10 assistant directors by Mary Forman, the Acting Director of ICE's
11 Office of Investigations. Although most of this "Forman
12 Memorandum" was furnished to the Project, portions of a few
13 paragraphs of the Forman Memorandum that describe three
14 "priorities" for investigation were redacted.¹

15 At the outset, it should be noted that these very modest
16 redactions are all that remain in dispute of much broader
17 requests for information that were materially granted, largely on
18 consent. The Project's two initial FOIA requests, submitted to

¹Priority 1 cases, the highest priority, were investigated with the assistance of the FBI and its Joint Terrorism Task Force. Priority 2 cases, the middle priority, consisted of suspected immigration status violators meeting the "Front Line threat profile," and were sometimes investigated with the assistance of local FBI agents depending on the potential source recruitment and intelligence value of the targets. Priority 3 cases, the lowest priority, were generally investigated by ICE agents without FBI assistance.

1 DHS in October 2006, broadly sought information related to
2 Operation Front Line, much of which was at first denied; but
3 after the Project filed this action in the district Court on
4 November 21, 2006, the parties entered into two stipulations,
5 pursuant to which DHS released thousands of pages of such
6 documents. The Project then moved for release of the remaining
7 requested documents. After reviewing unredacted documents in
8 camera, the district court ordered the release of many but not
9 all of the remaining documents. Then, after the Project filed
10 this appeal, DHS voluntarily released most of the information
11 that remained in dispute. Accordingly, the information the
12 Project now seeks consists simply of a paragraph describing
13 "Priority 1" and several redacted lines under "Priority 2."²

14 **DISCUSSION**

15 We review a district court's grant of summary judgment in a
16 FOIA action de novo. Wood v. FBI, 432 F.3d 78, 82 (2d Cir. 2005).

17 The district court determined that DHS properly withheld the
18 redacted portions of the Forman Memorandum under FOIA Exemptions
19 (b) (2) and (b) (7) (E).³ We need not here consider whether

² At the beginning of this appeal, the Project also disputed the withholding of two other words indicating the numbers of Priority 2 and 3 cases. However, during oral argument before this Court, the Project stated that it no longer disputed DHS's right to withhold this information.

³ Although the district court did not specifically cite the exemptions it applied, its conclusion that "DHS properly withheld th[e] specific information because it is either predominantly

1 Exemption (b) (2) applies because we conclude that the district
2 court properly applied Exemption (b) (7) (E). Exemption (b) (7) (E)
3 exempts from disclosure:

4 records or information compiled for law enforcement
5 purposes, but only to the extent that the production of such
6 law enforcement records or information . . . (E) would
7 disclose techniques and procedures for law enforcement
8 investigations or prosecutions, or would disclose guidelines
9 for law enforcement investigations or prosecutions if such
10 disclosure could reasonably be expected to risk
11 circumvention of the law

12
13 5 U.S.C. § 552(b) (7) (E).

14 The Project first argues that the redacted information in
15 the Forman Memorandum constitutes "guidelines" rather than
16 "techniques and procedures." Since Exemption (b) (7) (E) provides
17 that law enforcement guidelines may only be withheld if their
18 disclosure "could reasonably be expected to risk circumvention of
19 the law," the Project contends that the information at issue
20 could not reasonably be expected to engender such a risk and
21 therefore must be released to the Project.

22 In the alternative, the Project argues that even if the
23 redacted information relates to "techniques and procedures," the
24 qualifier at the end of the clause allowing non-disclosure only
25 "if such disclosure could reasonably be expected to risk

internal or compiled for law enforcement purposes and its
disclosure could risk circumvention of the law" indicates that it
applied Exemption (b) (2) and Exemption (b) (7) (E). See
Lowenstein, 603 F. Supp. 2d at 364.

1 circumvention of the law" applies not just to "guidelines" but
2 also to "techniques and procedures," and, accordingly, DHS still
3 must release the information.

4 We reject these arguments. Beginning, as we must, with the
5 plain meaning of the statute's text and structure, we see no
6 ambiguity. See Dobrova v. Holder, 607 F.3d 297, 301 (2d Cir.
7 2010) ("Statutory analysis necessarily begins with the plain
8 meaning of the law's text, and, absent ambiguity, will generally
9 end there." (internal quotation marks omitted)). The sentence
10 structure of Exemption (b) (7) (E) indicates that the qualifying
11 phrase ("if such disclosure could reasonably be expected to risk
12 circumvention of the law") modifies only "guidelines" and not
13 "techniques and procedures." This is because the two alternative
14 clauses that make up Exemption 7(E) are separated by a comma,
15 whereas the modifying condition at the end of the second clause
16 is not separated from its reference by anything at all. Thus,
17 basic rules of grammar and punctuation dictate that the
18 qualifying phrase modifies only the immediately antecedent
19 "guidelines" clause and not the more remote "techniques and
20 procedures" clause. See Barnhart v. Thomas, 540 U.S. 20, 26
21 (2003) (citing "the grammatical 'rule of the last antecedent'").

22 Any potential ambiguity in the statute's plain meaning is
23 removed, moreover, by the history of the statute's amendments.
24 See, e.g., Slayton v. Am. Express Co., 604 F.3d 758, 770-71 (2d

1 Cir. 2010) (“[W]here we find ambiguity we may delve into other
2 sources, including the legislative history, to discern Congress’s
3 meaning.”). Prior to 1986, the second clause did not exist and
4 the exemption consisted of "investigatory records compiled for
5 law enforcement purposes" to the extent that their production
6 would "disclose investigative techniques and procedures," without
7 any further qualification. 5 U.S.C. § 552(b)(7)(E) (1976). When
8 Congress enacted the current version of the statute in 1986, it
9 expanded the scope of Exemption 7(E) by adding the entire second
10 clause (including the modifier), thereby exempting "guidelines"
11 from disclosure only if public access to such guidelines would
12 risk circumvention of the law. See Pub. L. No. 99-570 § 1802(a),
13 100 Stat. 3207, 3207-48 to -49 (1986); see also S. Rep. No. 98-
14 221, at 25 (1983) (“The amendment also expands (b)(7)(E) to
15 permit withholding of ‘guidelines for law enforcement
16 investigations or prosecutions if such disclosure could
17 reasonably be expected to risk circumvention of the law.’”);
18 American Civil Liberties Union v. Dep’t of Def., 543 F.3d 59, 79
19 (2d Cir. 2008) (“Exemption 7(E) was expanded to allow agencies to
20 withhold information that would disclose law enforcement
21 guidelines - in addition to the already protected techniques and
22 procedures - if disclosure of the guidelines could reasonably be
23 expected to risk circumvention of the law.” (internal quotation
24 marks omitted)), vacated on other grounds and remanded, 130 S.

1 Ct. 777 (2009); Keys v. Dep't of Homeland Sec., 510 F. Supp. 2d
2 121, 129 (D.D.C. 2007) (concluding that "first clause of
3 Exemption 7(E) provides categorical protection for techniques and
4 procedures" without need for "demonstration of harm" (internal
5 quotation marks omitted)); Fischer v. U.S. Dep't of Justice, 772
6 F. Supp. 7, 12 n.9 (D.D.C. 1991) (noting that amendment to
7 Exemption (7)(E) provided "categorical protection" to techniques
8 and procedures), aff'd, 968 F.2d 92 (D.C. Cir. 1992). The fact
9 that the two clauses of the statute were introduced at different
10 times (the first clause in 1974 and the second clause in 1986)
11 and that the modifying language (requiring disclosure unless
12 "such disclosure could reasonably be expected to risk
13 circumvention of the law") was not part of the first clause as it
14 was originally enacted reinforces the conclusion that the
15 modifying language should be read as attaching only to the new
16 basis for exemption that was created along with it.

17 The argument that the redacted information constitutes
18 "guidelines" information, instead of information about
19 "techniques and procedures," requires us to address the
20 difference between the two categories. While difficulties may
21 arise in unusual cases, the basic distinction is apparent. The
22 term "guidelines" -- meaning, according to Webster's Third New
23 International Dictionary (1986), "an indication or outline of
24 future policy or conduct" -- generally refers in the context of

1 Exemption 7(E) to resource allocation. For example, if a law
2 enforcement agency concerned with tax evasion directs its staff
3 to bring charges only against those who evade more than \$100,000
4 in taxes, that direction constitutes a "guideline." The phrase
5 "techniques and procedures," however, refers to how law
6 enforcement officials go about investigating a crime. See
7 Webster's Third New International Dictionary (1986) (defining
8 "technique" as "a technical method of accomplishing a desired
9 aim"; and "procedure" as "a particular way of doing or of going
10 about the accomplishment of something"). For instance, if the
11 same agency informs tax investigators that cash-based businesses
12 are more likely to commit tax evasion than other businesses, and
13 therefore should be audited with particular care, focusing on
14 such targets constitutes a "technique or procedure" for
15 investigating tax evasion. Our in camera review of the entire
16 Forman Memorandum leads us to conclude that the redacted portions
17 constitute "techniques and procedures" for law enforcement
18 investigation.

19 Because we find that DHS properly withheld the information
20 under Exemption (b) (7) (E), we need not consider the other
21 arguments put forth by the Project. Accordingly, the judgment of
22 the district court granting partial summary in favor of DHS is
23 hereby AFFIRMED.